

Congress of the United States

Washington, DC 20515

January 6, 2000

VIA FACSIMILE: (202) 693-2106

The Honorable Charles Jeffress
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Room S-2315
Washington, DC 20210

Dear Assistant Secretary Jeffress:

The Occupational Safety and Health Administration's (OSHA, Agency) recently published proposed regulation on ergonomics is the most far reaching and burdensome regulation ever attempted by this Agency. Accordingly, the comment period and hearing schedule must be extended to accommodate those who wish to do a thorough job in preparing their submissions and participating in this rulemaking.

We are troubled by OSHA's decision in setting an initial comment period of just over 60 days, and by your recent statement that this would not be extended.¹ There are countless questions raised by OSHA's proposal and the accompanying material in the more than 300 pages of the preamble. To analyze this material and everything in the docket will take far longer than what OSHA has proposed. Not only is this period unconscionably short, it is disrespectful to those who have had to interrupt their family celebrations of Thanksgiving, Hanukkah, Christmas, Ramadan, and Kwanzaa to prepare their comments. This is a slap in the face to the small businesses and others who are sincere about participating in this process. OSHA's approach indicates that the agency is disingenuous in its comments about working with outside parties to improve this regulation.

Initiating this debate was one of the chief reasons that OSHA begged to be allowed to go forward with publishing this proposal, and yet, OSHA now appears to be trying to stifle the debate on this regulation. Furthermore, you have repeatedly said that you wanted to hear directly from business owners who would be effected by this rule. Unfortunately, given the length of the *Federal Register* publication and complexity of the issue, these are exactly the people who will be frozen out of the process. The only commenters with the resources to digest the information and develop a response, albeit not as thoroughly as possible, will be the legions of attorneys and ergonomics consultants who are already familiar with this issue. Now that the debate is happening, OSHA should not be doing everything in its power to prevent legitimate input from coming into the record.

¹ Bureau of National Affairs, Daily Labor Report, *OSHA Will Not Extend Comment Period For Ergonomics Rule, OSHA Chief Says*, December 7, 1999, page A-5.

Your assertions that this comment period should be short because interested parties have had since February 1999 to review the draft is an outrageous position.² OSHA unveiled its draft with the explicit statement that it would be changed before it was formally proposed. Indeed, it was released in conjunction with the Small Business Regulatory Enforcement Fairness Act panel being convened to review it and suggest changes. Thus, most observers took OSHA at its word and did not begin developing comments based on that draft. Sadly, in retrospect, that draft has changed very little. Furthermore, none of the explanatory material in the preamble, most of the material in the docket, and no part of the Initial Regulatory Flexibility Analysis were released at that point, meaning that those who wish to develop complete comments on OSHA's approach and rationale could not do this until the *Federal Register* publication which made some of this information available.

Another argument you have used to support this expedited process is that this issue is too important to wait, and the interests of employees demand quick action. This is just plain false. The interests of workers will not be served by a regulation that is so vague and unworkable that employers will not know what is expected of them. Nor will workers be served if the regulation is so burdensome that employers can not implement it without cutting jobs or replacing employees with automation. Employees, as well as employers, will be served best by OSHA allowing thoughtful comments and analysis to come into the record. The agency is obligated to consider these comments as part of the rulemaking process, although statements about getting the regulation out before the end of December 2000 cast doubt on how much attention the comments will receive. It is in OSHA's interest to review these comments thoroughly and revise its regulation so that it is reasonable and employers will know how to protect their employees when they consult it. Therefore, everyone's interests are served best by providing adequate time for comprehensive and detailed comments to be developed.

In addition, this length of comment period is unprecedented in the history of significant OSHA regulations. As the attached table indicates, previous significant OSHA regulations have had comment periods that were initially longer than this and in some cases were also extended, sometimes more than once. It should also be noted that OSHA has often reopened a rulemaking to take further comments on specific issues. This is not the time to be departing from this pattern and practice.



For all of these reasons, as well as basic fairness, we request that OSHA extend the comment deadline for the ergonomics proposal to 30 days after the National Academy of Sciences study is completed. Furthermore, the schedule for hearings and post hearing comments should be extended in a similar way so that comments submitted to the docket can be analyzed and referred to during hearing statements. This time frame is consistent with the passage of H.R. 987 and the bipartisan support that S. 1070 has received.

² Daily Labor Report, December 7, 1999, page A-5.

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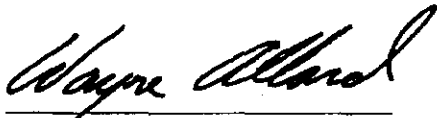
We look forward to your prompt granting of this request.

Sincerely,

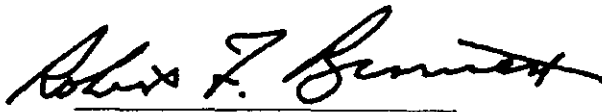
 

Senator John Ashcroft

Senator Christopher S. Bond



Senator Wayne Allard



Senator Robert F. Bennett



Senator Sam Brownback



Senator Jim Bunning



Senator Paul Coverdell



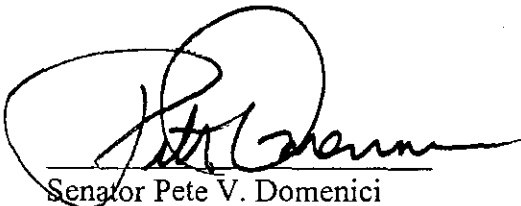
Senator Larry E. Craig



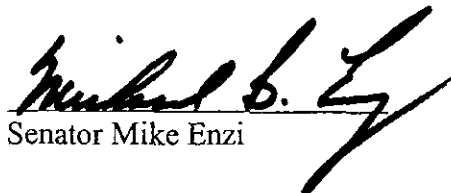
Senator Mike Crapo



Senator Mike DeWine



Senator Pete V. Domenici



Senator Mike Enzi



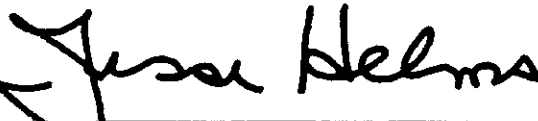
Senator Rod Grams



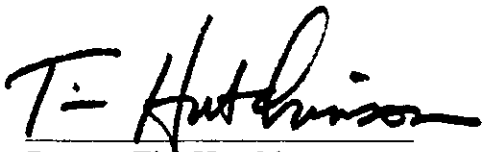
Senator Judd Gregg



Senator Chuck Hagel



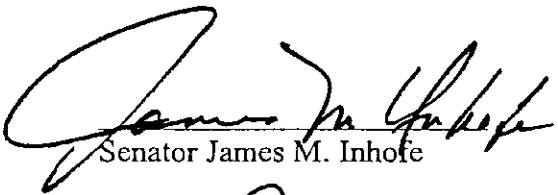
Senator Jesse Helms



Senator Tim Hutchinson



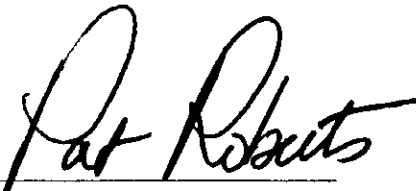
Senator Jon Kyl



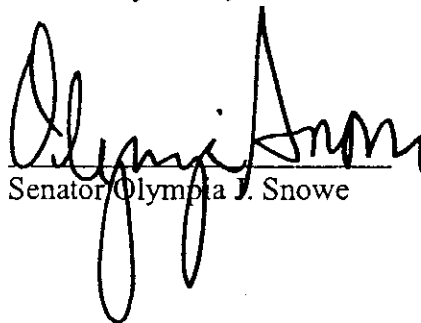
Senator James M. Inhofe



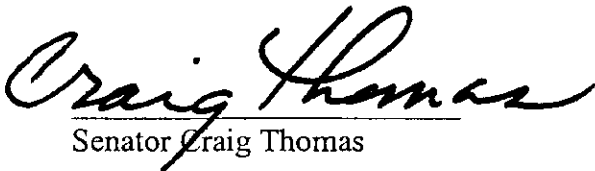
Senator Kay Bailey Hutchison



Senator Pat Roberts



Senator Olympia J. Snowe



Senator Craig Thomas

Attachment

Jim Heston

Ray Blunt

Rep. F. Wicks

Jim DeMint

Steve Largent

John E. Peterson

Charles F. Bass

Rob Portman

Paula Jones

Tom DeFazio

Paul Hays

Virgil Goode, Jr.

Josh Pitts

Chip Pickens

John E. Sununu

Paul Ryan

Ron Paul

Rick Hill

John Wamp

Ann Hutchinson

Wes Watkins

Pete Sessions

Paul Gillson

John Hays

John Cunningham

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John Hays

My Bouillon

Ed Shum

Tom Tancredo

Opel Hefley

SIGNIFICANT OSHA RULEMAKINGS: INITIAL COMMENT PERIODS AND EXTENSIONS

Title of Regulation	Initial Comment Period	Extension	Total Length of Comment Period
Methylene Chloride (29 CFR 1910.1052, 1915.1052, 1926.1152)	5 months	none	5 months
1,3 Butadiene (29 CFR 1910.1051)	5 months	13 months	18 months
Construction Scaffolding (29 CFR 1926.450-454)	3 months	6 months	9 months
Logging Operations (29 CFR 1910.266)	3 months	none	3 months
Electric Power Generation (29 CFR 1910.269)	3 months	1 month	4 months
Revised Fall Protection for Construction Industry (29 CFR 1926, Part M)	3 months	5.75 months	8.75 months